

NOTICE OF LIEN AND EXTENDED USE AGREEMENT

BY

Dated: September 30, 2009

***FOR USE WITH ALL SECTION 42 DEVELOPMENTS, INCLUDING DEVELOPMENTS
FINANCED WITH TAX-EXEMPT ARRA SECTION 1602 FUNDS**

Development Name: _____

Development Location: _____

Development Building Identification Number ("BIN") _____

D-U-N-S # _____

SECTION 1602 LIEN AND EXTENDED USE AGREEMENT

LOAN «GI_KEY»

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AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
SECTION 1602 TAX CREDIT EXCHANGE PROGRAM
LIEN AND EXTENDED USE AGREEMENT
Borrower's D-U-N-S # _____

This Lien and Extended Use Agreement (the "Agreement") is made by and between ("Owner"), the owner of certain real estate located at , , in County, State of Indiana, more particularly described on "Exhibit A" ("Real Estate"), and the **INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY** ("IHCD" or the "Authority"), a public body corporate and politic of the State of Indiana.

I. PURPOSE

- A. IHCD is authorized to act as the state's housing credit agency and administers, operates, and manages the American Recovery and Reinvestment Act of 2009 (the "ARRA") Section 1602 Tax Credit Exchange program pursuant to Section 42 of the Internal Revenue Code of 1986 ("Code") and other rules, regulations, guidance and notices relating to Section 1602 issued by the United States Department of the Treasury or IHCD, from time to time (collectively "Section 1602 Program").
- B. Pursuant to that certain loan agreement of even date herewith between Owner and IHCD (the "Loan Agreement"), IHCD has agreed to loan to Owner certain Section 1602 Program funds (the "Loan") to be used to finance the construction or rehabilitation of a rental housing project proposed in Owner's Section 1602 application for the Real Estate ("Project"), which Project is subject to all of the requirements of the Section 1602 Program. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.
- C. Owner represented to the Authority, and the Authority has relied on those representations, that the Project shall comply with all applicable construction, occupancy, and affordability requirements of the Section 1602 Program and that the Project shall continue to meet these requirements for the extended use period, as defined below.
- D. The Section 1602 Program requires that certain use restrictions be imposed upon any real estate assisted by Section 1602 Program funds awarded by IHCD to comply with the Code.
- E. Specifically, IHCD requires that the use restrictions remain in force and effect for the entire period required by the Internal Revenue Service (the "IRS"), the Allocation Plan and any extended use period selected by Owner ("Extended Use Period"), which period is indicated below by an "X":

Selection Insert "X"	Owner's Commitment	Extended Use Period
	Tenant Lease/Purchase	15 years
	Section 42 Compliance Period, plus 15 years	30 years
	Section 42 Compliance Period, plus 20 years	35 years
	Section 42 Compliance Period, plus 25 years	40 years

D-U-N-S # _____

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II. COVENANTS AND OBLIGATIONS

The parties agree that the Loan constitutes adequate consideration for the obligations undertaken by Owner in this Agreement. As of the date entered below, Owner hereby imposes the following use and deed restrictions upon the Real Estate and warrants, grants and conveys to IHCD a lien upon the Real Estate for the duration of the Extended Use Period (the "Lien"). In consideration of these mutual undertakings and covenants, the parties further agree as follows:

- A. As a condition precedent to the loan of funds under the Section 1602 Program, Owner shall deliver to and record this Agreement and its attachments with the Office of the Recorder for _____ County, Indiana, in which the Real Estate is located, to create a restrictive covenant running with the land upon which the Project is situated. Owner agrees that all requirements under Indiana law that must be satisfied so that provisions of this Agreement constitute valid and binding deed restrictions and covenants running with the Real Estate shall be satisfied in full. Throughout the term of this Agreement and any amendment thereto, its covenants and restrictions shall survive and be effective regardless of whether any contract, deed or other instrument subsequently executed conveying all or part of the Real Estate provides that such conveyance is subject to this Agreement. Owner agrees to obtain the consent of any prior recorded lien holder on the Real Estate to this Agreement, which consent shall be in the form of Exhibit "B," attached hereto and made a part hereof.
- B. Owner and the Project must continuously comply with the Section 1602 Program, including applicable sections of the Code and all Treasury Regulations and rulings relating thereto, each as amended from time to time, as well as the occupancy, development, and rent restriction requirements of the Code, the Allocation Plan and the additional commitments Owner made to IHCD resulting in issuance of Form 8609, which Owner agreed to satisfy in the initial and final applications (collectively, the "Occupancy Restrictions"), all of which are incorporated herein by reference. Such Occupancy Restrictions include, but are not limited to:
 1. Use Restriction. The property will only serve and be utilized by families that are low-income families or very low-income families as defined in and pursuant to the requirements of the Section 1602 Program ("Qualifying Tenants") for a period of thirty (30) years beginning on the date on which the Property is put into service in accordance with Section 42 of the Internal Revenue Code. In addition, Owner shall take and not fail to take all such action as is necessary to ensure that during this period ____ (____) of the ____ (____) units in the Project will be occupied by persons at or below sixty percent (60%) of the median income for the area ("AMI"). In addition, Owner shall at all times ensure that it complies with all leasing and affordability requirements of the Section 1602 Program or any successor program, as published by Lender. Owner shall take all steps necessary, and not fail to take any step necessary, to ensure that the rent charged for the units will not exceed the applicable rent limits as published by IHCD from time to time
 2. Maximum Rent Limits. The following schedules establish the number of assisted units and current published rent limits, minus tenant-paid utilities applicable to the Project:

1602 Units	0 BR	1 BR	2 BR	3 BR	4 BR
Maximum Allowable Rent for Tenants at 30% AMI					
Maximum Allowable Rent for Tenants at 40% AMI					

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Maximum Allowable Rent for Tenants at 50% AMI					
Maximum Allowable Rent for Tenants at 60% AMI					

- C. Subject to the requirements of the Code, which prohibits the disposition to any person of any portion of the building to which this Agreement applies unless all of the building is disposed of to such person, Owner may sell, transfer or exchange the Project; provided, however, such sale, transfer or exchange shall be voidable by the Authority if the Authority is not first notified in writing and provided with the identity of the buyer or other successor of Owner's interest in the Project, together with such other information requested by the Authority. The partial disposition prohibition shall not apply to the Project if it is acquired by foreclosure (or instrument in lieu of foreclosure), unless the IRS or the Authority determines that such acquisition is part of an arrangement with the Owner, or its successors or assigns, a purpose of which is to terminate the Extended Use Period. This subparagraph shall not act to waive any other restriction on sale, transfer or exchange of the Project.
- D. Neither the Owner nor representatives acting on behalf of the Owner shall during the Extended Use Period or the three-year period immediately following termination of this Agreement as provided herein, 1) evict or terminate the tenancy of an existing tenant (other than for good cause), or 2) increase the gross rent with respect to any unit not otherwise permitted under Section 42.
- E. IHCD and Qualifying Tenant(s) (or either or all of them) are entitled, for any breach of this Agreement, to enforce specific performance by Owner of its obligations under this Agreement in a state court of competent jurisdiction in Indiana, in addition to all other remedies provided by law or in equity. Owner unconditionally agrees that the beneficiaries of Owner's obligations under this Agreement cannot adequately be compensated by monetary damages in the event of any such breach.
- F. Owner acknowledges that the financial assistance received through the Section 1602 Program represents good and valuable consideration for this Agreement and that these restrictions on the use of the Project are consistent with the statutes, regulations, terms, conditions, and requirements for the Section 1602 Program as administered by IHCD.
- G. Owner shall indemnify, save and hold harmless the Authority, its directors, officers, employees and agents from any and all claims, losses, damages or expenses (including reasonable attorneys' fees) arising out of or in any way related to failure or alleged failure of the Owner to strictly and timely perform its obligations under this Agreement, or as a result of the Loan to the Project, or the recapture of any portion of the Loan by any appropriate governmental agency.

III. TERM, TERMINATION, MISCELLANEOUS

- A. The terms, conditions, covenants and restrictions of this Agreement commence on the first day on which the first residential unit in the Project is placed in service and end on the date which is the later of (i) the Extended Use Period set forth in part I.E., or (ii) the expiration of any additional extended use period, set forth in "Exhibit C" attached hereto.
- B. Notwithstanding anything in this Agreement to the contrary, the Extended Use Period for any building which is a part of the Project shall terminate on the date such building is acquired by foreclosure or instrument in lieu of foreclosure, subject to the limitations in part III.C. below.

- C. The Lien may be foreclosed and the restrictive covenants may terminate on the date the Project is acquired by foreclosure in accordance with the laws of the State of Indiana, or instrument in lieu of foreclosure, provided that IHCD A has received prior notice of the default and foreclosure action and any other information IHCD A requests about the disposition of the property following foreclosure. The foregoing shall not apply to the Project if the IRS or the Authority determines any such acquisition of the Project is part of an arrangement with the Owner, or its successors or assigns, a purpose of which is to terminate the Extended Use Period.
- D. This Agreement shall be binding upon the Project, shall constitute covenants running with the land, and shall be governed, construed, and interpreted in accordance with the laws of the State of Indiana. Owner agrees that any and all requirements of the laws of the State of Indiana that must be satisfied so the provisions of this Agreement constitute valid and binding deed restrictions and covenants running with the Real Estate shall be satisfied in full. Except as otherwise provided herein, the covenants and restrictions contained herein shall survive and be effective throughout the Extended Use Period, regardless of whether any contract, deed or other instrument hereafter executed conveying the Real Estate or a portion thereof provides that such conveyance is subject to this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.
- E. This Agreement may be amended only with the prior written approval of the Authority and no amendment shall be effective without such prior written approval. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof. All notices to be given pursuant to this Agreement shall be in writing and mailed by certified mail to the parties hereto at the addresses set forth below or to such other place as a party may from time to time designate in writing.

This Lien and Extended Use Agreement is effective as of the ____ day of _____, 20__.

IN WITNESS WHEREOF, Owner and the Authority have caused this Agreement to be signed by duly authorized representatives, on the day and year first written above.

OWNER:

By: _____

Printed: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public, in and for said county and State, personally appeared _____ the
_____ of _____, who acknowledged that the foregoing Lien and Extended Use
Agreement was executed in such capacity as its voluntary act and deed and that the foregoing representations are
true and correct.

WITNESS my hand and seal this _____ day of _____, 20____.

A Resident of _____ County, Indiana

My Commission Expires: _____

AGREED TO this _____ day of _____ by the Authority.

INDIANA HOUSING AND COMMUNITY
DEVELOPMENT AUTHORITY

By: _____
Sherry Seiwert, Executive Director
30 South Meridian Street, Suite 1000
Indianapolis, IN 46204

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public, in and for said county and State, personally appeared Sherry Seiwert, the Executive Director of IHCD, who acknowledged that the foregoing Lien and Extended Use Agreement was executed in such capacity as its voluntary act and deed and that the foregoing representations are true and correct.

WITNESS my hand and seal this _____ day of _____, 20____.

A Resident of _____ County, Indiana

My Commission Expires: _____

This instrument was prepared by Deborah K. Hepler (18003-49), General Counsel, Indiana Housing and Community Development Authority, 30 South Meridian Street, Suite 1000, Indianapolis, IN 46204 (317) 232-7777.

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law, /s/ [insert name of preparer]

1470264 v4; BME; 9/24/09

EXHIBIT A

**MORTGAGEE'S ACKNOWLEDGEMENT AND CONSENT TO
TO THE LIEN AND EXTENDED USE AGREEMENT**

_____, being the mortgagee of record ("Mortgagee") pursuant to a mortgage recorded as Instrument No. _____, and filed in the Office of the Recorder of _____ County, Indiana on _____, hereby consents to the Lien and Extended Use Agreement ("Agreement") executed by _____ ("Owner") on _____. Specifically, Mortgagee acknowledges having notice of the conditions under which the Agreement may be terminated and the lien foreclosed, as provided in the Agreement.

IN WITNESS WHEREOF, Mortgagee, by its duly authorized officer, has hereunto executed this Mortgagee's Consent to Lien and Extended Use Agreement this _____ day of _____, 20__

"MORTGAGEE"

By: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, the _____ of _____, (“Mortgagee”), who acknowledged that the foregoing Consent was executed in such capacity for and on behalf of the Mortgagee.

WITNESS my hand and seal this _____ day of _____.

My County of Residence:

Notary Public

My Commission Expires:

Printed Name

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